

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

INTRODUCTION

1. Pursuant to 29 USC § 207 (“FLSA”), the named Plaintiffs allege violations of their statutory employment right to receive overtime pay from Defendants, Marvin Salcido, Jr. and Salcido Lawn & Landscaping, Inc. (Hereinafter collectively “Salcido”) as a result of their failure to pay Plaintiffs and all those similarly situated employees overtime wages. Pursuant to 29 USC § 216 (b), the named Plaintiffs also seek to represent all other similarly situated past and present employees, as described herein, who have not been paid overtime and to have this action certified as a collective action. Pursuant to 29 USC §216 (b), the named Plaintiffs also seek to represent all other similarly situated employees, as described herein, who have not been paid overtime and to have this action certified as a collective action. For themselves and all those similarly situated, the named Plaintiffs seeks their unpaid overtime, liquidated damages, all available equitable relief, attorney fees, and litigation expenses/costs, including expert witness fees and expenses.

PARTIES

2. Plaintiffs, Arturo Gonzalez, Ricardo Hermosillo and David Carrizales are residents of Tyler, Smith County, Texas. The Consents to join this action are attached as Exhibit A. The Plaintiffs bring this action individually in their own behalf and, pursuant to §216(b) of the Fair Labor Standards Act, as a representative of a class of individuals who are similarly situated and who have suffered the same or similar damages. Defendant, Salcido Lawn & Landscape, Inc. is a Texas corporation doing business in the state of Texas with its principal place of business at 914 West Houston St., Tyler, Texas 75702. Defendant, Salcido Lawn & Landscape, Inc. may be served by delivering a copy of this petition to its registered agent for service, Marvin Salcido, Jr. at 914 West Houston St., Tyler, Texas 75702. Defendant, Marvin Salcido, Jr. may be served at 914 West Houston St., Tyler, Texas 75702.

JURISDICTION AND VENUE

3. This court has jurisdiction by virtue of 28 USC §§ 1331, and 1331. The Defendant's Tyler, Texas location is located within the Eastern District of Texas and the Court has subject matter jurisdiction and personal jurisdiction to hear the case. *See* 29 U.S.C. 201, et seq.

FACTS

4. Plaintiffs were employed at Salcido Lawn & Landscape performing landscaping work; however, the work they did for Salcido was not exempt as defined under the FLSA. The evidence at trial will show that Plaintiffs were not paid overtime wages at one and one-half times their regular hourly rate for all hours worked in excess of 40 hours in a work week.

5. Plaintiffs believe and, therefore, allege that the failure of Salcido's to pay Plaintiffs and all those similarly situated for overtime pay was intentional.

6. Defendants also made unlawful deductions from Plaintiffs' pay for items which were unauthorized by Plaintiffs.

7. Defendant, Salcido Lawn & Landscape, Inc. was incorporated March 29, 2013. Prior to the incorporation, the business was operated as a sole proprietorship of Defendant, Marvin Salcido, Jr.

8. Defendant, Marvin Salcido, Jr. was the manager of all operations for Salcido Lawn & Landscaping, Inc. He was responsible for all decisions regarding the pay practices at the company.

CLAIMS

FAIR LABOR STANDARDS ACT

9. The Fair Labor Standards Act (29 U.S.C. § 201, *et seq.*) is commonly referred to as "FSLA." Among other things, the FSLA statutes and the regulations promulgated there under govern the activities of the pay practices of employers involved in commerce. Plaintiffs allege that the failure to pay Plaintiffs and all those similarly situated for all hours worked is a direct violation of the FLSA statutes and regulations. Additionally, Plaintiffs allege that the failure to pay Plaintiffs and all those similarly situated one and one-half his regular rate for all hours worked in excess of 40 hours in a work week is a direct violation of the FLSA statutes and regulations. Plaintiffs and all those similarly situated are entitled to receive the unpaid wages due him, liquidated damages, costs, and attorneys' fees.

TEXAS PAY DAY LAW

10. Defendants made unlawful deductions from Plaintiffs' pay pursuant to Texas Labor Code Sec. 61.018. Plaintiffs seek recovery of all unlawful pay deductions.

INDIVIDUAL LIABILITY OF MARVIN SALCIDO, JR.

11. Marvin Salcido, Jr. operated the company as a sole proprietorship until March 29, 2013;

therefore he is individually liable for the wages owed. After March 29, 2013, Marvin Salcido, Jr. controlled the pay practices of Salcido Lawn & Landscape, Inc. and all other operational functions of the company to make him personally liable for the wages owed pursuant to the FLSA.

COLLECTIVE ACTION

12. Pursuant to 29 U.S.C. § 216 (b), Plaintiffs Arturo Gonzales, Ricardo Hermosillo and David Carrizales bring this action in their individual capacities and as a collective action. As alleged in detail elsewhere herein, Arturo Gonzalez, Ricardo Hermosillo and David Carrizales seeks this court's appointment and\or designation as representatives of a class of similarly situated employees of Salcido Lawn & Landscaping who were not paid for all overtime hours worked as described herein. On information and belief, there are numerous employees who were not paid for all overtime hours worked for Salcido Lawn & Landscaping as described herein. The questions of law and fact are common to the class of similarly situated employees. The failure to pay its employees for the overtime hours worked was common to all of Salcido Lawn & Landscaping employees.

13. Arturo Gonzalez, Ricardo Hermosillo and David Carrizales specifically request that they be permitted to serve as representatives of the affected class, and this action should be certified as a collective action pursuant to 29 U.S.C. § 216(b).

JURY DEMAND

14. Plaintiffs, individually and as representatives of the class, request a jury trial.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the class be certified and that the Plaintiffs and each member of the class recover from Marvin Salcido, Jr. and Salcido Lawn & Landscaping, Inc. the following:

1. The unpaid wages due to Plaintiffs;
2. Liquidated damages authorized by the applicable statutes;
3. Unpaid wages due to all class members;
4. Liquidated damages to all class members;
5. Court costs;
6. Attorneys' fees; and
7. Such other and further relief as the Court deems just.

Respectfully submitted,

/s/
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